

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION )	
FOR TRANSFER NO. 70145 IN THE )	
NAME OF WILLIAM J. MILLENKAMP )	<b>PRELIMINARY ORDER</b>
AND SUSAN MILLENKAMP )	
_____ )	

This matter having come before the Idaho Department of Water Resources ("Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

**FINDINGS OF FACT**

1. Water right **36-04157F** was decreed on April 5, 2002, in the Snake River Basin Adjudication as follows:

Source:	Ground water
Priority:	June 1, 1956
Rate of diversion:	0.33 cubic feet per second ("cfs")
Annual volume:	49.2 Acre Feet per ("AFA")
Point of diversion:	Lot 3 (SE1/4 NE1/4) Section 28, T7S, R16E, B.M. (2 points)
Use:	Stockwater
Season of use:	Year-round
Place of use:	W1/2NW1/4 Section 27 and SE1/4NE1/4 Section 28, T7S, R16E, B.M.
Remarks/Conditions of approval:	
	- Use of this right from all points of diversion is limited to a total combined rate of diversion of 0.33 cfs and to a total combined annual diversion volume of 49.2 AF
	- This right is a split from former right 36-04157C.
	- This right was created by prior transfer no. 68529, which matter was protested and resolved by an agreement between the parties

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On September 6, 2002, William J. Millenkamp and Susan Millenkamp ("applicant") filed Application for Transfer No. 70145 ("application") with the Department

seeking to add a point of diversion in the Lot 3 (SENE) Section 28, T7S, R16E, B.M. and to add the SWNE Section 28, T7S, R16E, B.M. to the place of use for water right 36-04157F.

3. The Department published notice of the application that was protested by Mark T. Vineyard, William Gulley, Steve Matthews, Wayne T. Slack, Gary Mitchell and Dell S. Phillips.

4. On March 11, 2003, the Department conducted a hearing in the matter. The applicant was present and was represented by Timothy Stover. Protestants Mark T. Vineyard, William Gulley, Steve Matthews, Gary Mitchell and Dell S. Phillips were present at the hearing. Steve Matthews was the only protestant, however, to participate as a full party in the hearing. Protestant Wayne T. Slack did not appear at the hearing.

5. Issues the Department can consider in this matter are as follows:

- a. Whether the proposed changes will injure other water rights;
- b. Whether the proposed changes will constitute an enlargement in use of the original right;
- c. Whether the proposed changes are in the local public interest;
- d. Whether the proposed changes are consistent with the conservation of water resources within the state of Idaho; and
- e. Whether the water right sought for transfer is valid and has not been forfeited through nonuse.

6. Exhibits premarked, offered or accepted as a part of the record are as follows:

Applicant's:

Exhibit 1 - Panoramic color photo of Millenkamp Cattle Facilities - by Brockway Engineering

Exhibit 2 - Eight (8) photographs of the Millenkamp Cattle facilities

Exhibit 3 - Location Map Millenkamp Cattle - by Brockway Engineering

Exhibit 4 - Millenkamp Cattle Site Plan

Exhibit 5 - Letter dated June 13, 2001 to Art Brown from Karl Hayes

Exhibit 6 - Letter dated June 12, 2001 to Jerome County Planning and Zoning from Jerome Highway District

Exhibit 7 - Letter dated June 4, 2001 to Art Brown from Joe Robinette

Exhibit 8 - Letter dated August 27, 2001 to Idaho State Department of Agriculture from Veronica Lierman and letter dated September 27, 2001 to Art Brown from the Idaho State CAFO Siting Team

Exhibit 9 - Staff Report for Bill Millenkamp Confined Feeding Operation by County of Jerome Planning and Zoning

Exhibit 10 - Staff Report for Bill Millenkamp's Livestock Confinement Operation Permit Application - Undated

Exhibit 11 - Letter dated August 27, 2001 to Bill Millenkamp from Heather Jensen and three (3) Livestock Facility Waste Inspection Reports

Exhibit 12 - Letter dated December 11, 2002 to Millenkamp Heifers from Heather Jensen

Exhibit 13 - Construction Inspection Report dated December 23, 2002

Exhibit 14 - Notice of Decision by Art Brown - undated

Exhibit 15 - Livestock Confinement Operations Water Requirements and Consumptive Use Worksheet by Brockway Engineering - February 20, 2003

Exhibit 16 - Well Interference Analysis by Brockway Engineering - January 29, 2003 - (Pumping rate = 0.068 cfs)

Exhibit 17 - Well Interference Analysis by Brockway Engineering - January 29, 2003 - (Pumping rate = ).33 cfs)

Exhibit 18 - Miscellaneous receipts

Exhibit 19 - Order of Dismissal, Jerome County District Court, Case No. CR MD 03-70 dated March 10, 2003 in the case of State of Idaho v Bill Millenkamp

Exhibit 20 - Idaho Department of Agriculture - Animal Industries Complaint Form

Exhibit 21 - Letter dated February 25, 2003 to Bill Millenkamp from Arthur Rob Brown

Exhibit 22 - Letter dated March 10, 2003 from John J. Gomez

Protestant's:

Exhibit A - Undated letter to Erick M. Shaner from Steve Matthews, Letter dated December 19, 2002 to Steve Matthews from J.O. Nicholson III, Letter dated December 4, 2002 to Bill Millenkamp from Arthur Roy Brown

Exhibit B - Jerome County Sheriff's Office, Voluntary Statement Form, Letter dated November 7, 2002 to Steve Matthews from Arthur Roy Brown, Letter dated November 18, 2002 to Art Brown from Steve Matthews

Exhibit C - Letter dated January 3, 2003 to Art Brown from Steve Matthews, Letter dated January 3, 2002 to Steve Matthews from Arthur Roy Brown, Undated letter to Eric Shaner from Steve Matthews, Letter dated January 14, 2003 to Bill Millenkamp from Erick M. Shaner

Exhibit D - Letter dated February 3, 2003 to Erick Shaner from Steve Matthews

Exhibit E - Treasure Valley Air Quality Issues prepared by Department of Environmental Quality, February 10, 2003 together with 3 photographs

Exhibit F - Letter dated June 19, 2002 to Millenkamp Heifers from Heather Jensen

Exhibit G - T7S, R16E Section 28 Ground Water Vulnerability, IDWR 07-24-02

Exhibit H - Jerome County Courts, Misdemeanor arraignments

7. The applicant owns a calf raising operation located about 4.5 miles north and 3 miles west of Jerome, Idaho. Jerome County has authorized a Livestock Confinement Operation not to exceed 12,000 baby calves from 0 to 4 months old or 4,800 animal units. (See Applicant's Exhibit 21).

8. The applicant seeks to add a 40-acre tract to the place of use that is authorized for the calf raising operation. The tract to be added would move part of the operation a quarter mile further away from the protestants. The applicant does not seek to add more calves with the land addition but instead is trying to "spread out" his operation for the benefit of the calves and neighbors.

9. The applicant also seeks to add a point of diversion (new well) to his existing water right but does not seek additional water, since his existing water right will provide enough water. (See Applicant's Exhibit 15). The applicant presently uses a domestic well and a larger production well that are hooked together to provide water for the calf raising operation. A second production well sought under the application when hooked to the original production well would provide a more reliable source of water and would maintain constant water pressure in the applicant's delivery system. The domestic well then would be severed from the calf operation and would only be used for domestic purposes associated with the applicant's home.

10. The applicant has developed a preliminary nutrient management plan although one is not required until January 2005 for his operation.

11. The Idaho State Siting Team has conducted a site evaluation and has determined that the suitability of the site is "Low Risk." (See Applicant's Exhibit 8).

12. The applicant scrapes manure daily and uses water trucks to control dust arising from the facility.

13. The applicant has 40 employees, a 1.2 million dollar annual payroll and buys supplies locally for the operation.

14. Although diversion from the applicant's wells has not been measured in the past, the applicant has volunteered to install totalizing water measuring devices to monitor the amount of water diverted.

15. With respect to the effect of the applicant's pumping on other wells, using an average annual pumping rate of 0.068 cfs, the estimated drawdown in the applicant's wells after 60 days of pumping is 0.11 feet. Using the same parameters, the estimated drawdown in the protestant's wells is 0.01 feet. Using the maximum pumping rate of 0.33 cfs, the estimated drawdown in the applicant's wells after 60 days of pumping is 0.5 feet. Using the same parameters, the estimated drawdown in the protestant's wells is 0.04 feet. These estimated changes are already occurring and are not attributable to the application for transfer. (See Applicant's Exhibit 17).

16. Although protestants Sam Matthews and Gary Mitchell testified against approval of the application, their testimony did not appear to clearly relate to the issues the Department can consider under section 42-222, Idaho Code. Mr. Matthews stated he questioned the integrity of the applicant, since the applicant had not always complied with the requirements of Jerome County. Mr. Mitchell generally did not support the calf raising operation due to changes to the community allegedly attributable to the calf raising operation.

### **CONCLUSIONS OF LAW**

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code; ....

2. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. The proposed changes will not injure other water rights.

6. The proposed changes do not constitute an enlargement in use of the original right.

7. The proposed changes are in the local public interest.

8. The proposed changes are consistent with the conservation of water resources within the state of Idaho.

9. The Department should approve the application with certain conditions of approval.

### **ORDER**

IT IS THEREFORE, hereby ORDERED that the protest of Wayne T. Slack is **SET ASIDE** for failure to appear at the hearing and will not be further considered by the Department.

IT IS FURTHER hereby ORDERED that Application for Transfer No. 70145 in the name of William J. Millenkamp and Susan Millenkamp is **APPROVED** subject to the following conditions:

1. The total instantaneous diversion of water from all points of diversion under Right 36-4157F shall not exceed 0.33 cfs, nor a total combined annual volume of 49.2 AFA.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
3. The right holder shall measure and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.

4. Prior to the diversion and use of water under Transfer approval 70145, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
5. The right holder shall maintain a lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
6. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules of the Department.
7. Use of water under this right may be affected by an agreement between the parties in connection with prior transfer 68529 that created water right 36-04157F
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Signed this \_\_\_\_28th\_\_\_\_ day of \_\_\_\_\_March \_\_\_\_\_, 2003.

\_\_\_\_\_/signed/\_\_\_\_\_  
L. GLEN SAXTON, P.E.  
Hearing Officer